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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,435	12/21/2001	Fred Zulli	1761-0011	1885

7590

12/31/2002

Paul J. Maginot  
Maginot, Addison & Moore  
Bank One Center/Tower  
111 Monument Circle, Suite 3000  
Indianapolis, IN 46204-5115

EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary***File Copy*

Application No.

10/027,435

Applicant(s)

ZULLI ET AL.

Examiner

JYOTHSNA A VENKAT

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

Receipt is acknowledged of Declaration, fee, IDS and supplemental IDS filed on 3/25/02, 3/14/02 and 12/21/01. Claims 1-4 are pending in the application and the status of the application is as follows:

#### ***Oath/Declaration***

The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 601.01(a).

#### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Switzerland on 12/22/00. It is noted, however, that applicant has not filed a certified copy of the Switzerland 2520/00 application as required by 35 U.S.C. 119(b).

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO98/33494 ('494).

4. See page 47 for the Grape seed extract, which has oligomeric procyanadins (OPC). This reads on the claimed water-soluble procyanadins and also the procyanadins in the oligomeric form. See the same page for tocopherol acetate, which reads on the claimed tocopherols.

Applicants in the examples use the same procyanadins obtained from the grape seed extract. The claims are drawn to the product and the intended use does not carry any patentable weight. Since the procyanadins is the same to that disclosed in the document, claim 4 is inherent absence of evidence to the contrary. The expression “ comprising “ in the claims is inclusive of all the unrecited ingredients in major amounts.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0768,079(079).

See pages 4-5 for the compound 2 under example 9. This reads on the claimed water-soluble procyanadins. See also the same example for dl tocopherol. The claims are drawn to the product and the intended use does not carry any patentable weight. The expression “ comprising “ in the claims is inclusive of all the unrecited ingredients in major amounts.

6. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0955,051('051).

See page 7, under example 8. This reads on the claimed water-soluble procyanadins. See also the same example for tocopherol acetate. The claims are drawn to the product and the intended use does not carry any patentable weight. The expression “ comprising “ in the claims is inclusive of all the unrecited ingredients in major amounts.

7. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent 5,945,409('409).

See col.12, under part 3. This reads on the claimed water-soluble procyanadins. See also for Vitamin E tocopherol. The claims are drawn to the product and the intended use does not

Art Unit: 1615

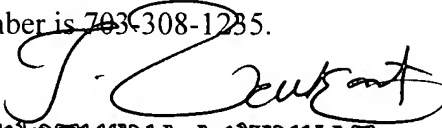
carry any patentable weight. The expression " comprising " in the claims is inclusive of all the unrecited ingredients in major amounts.

8. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on M-F, 9:30-6:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1285.

  
JYOTHSNA A VENKAT  
Primary Examiner  
Art Unit 1615

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December 23, 2002